

REMARKS

I. Overview

Claims 9-15 are pending in the present application. Claims 9, 10 and 12-14 have been amended. New claims 16-19 have been added. Applicant respectfully requests reconsideration of the claims in view of the following remarks.

The issues raised by the Examiner in the Final Office Action dated March 16, 2010 (“Final Action”) are as follows:

- Claims 9, 11, 12 and 14 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,724,106 to Autry, et al. (“Autry”) in view of U.S. Patent No. 5,703,623 to Hall, et al. (“Hall”); and
- Claims 10, 13 and 15 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Autry in view of Hall and further in view of U.S. Patent No. 5,623,099 to Schuster, *et al.* (“Schuster”).

Applicant respectfully traverses the outstanding claim rejections and requests reconsideration and withdrawal in light of the amendments and remarks presented herein.

II. New Claims

New claims 16-19 have been added. Applicant submits that no new matter has been added by new claims 16-19, which are supported in the original specification at least at page 17, lines 3-14; page 31, line 16 - page 32, line 13; page 43, lines 1-11; page 44, lines 4-8; and page 54, lines 4-11.

III. Rejections under 35 U.S.C. § 103

Pending independent claims 9 and 12 stand rejected under 35 U.S.C. § 103(a) as assertedly being unpatentable in view of the combination of Autry and Hall. The rejections asserted against the dependent claims also rely on these references.

Autry and Hall are not valid prior art references

The present application claims a priority date of July 5, 1996, which is the filing date of U.S. Patent No. 6,222,525.

A declaration by the inventor, Brad A. Armstrong, is attached providing evidence showing that he had conceived of and was in possession of the present invention at least as early

as January 24, 1996. Therefore, the date of invention for the pending claims is at least as early as January 24, 1996.

The Autry patent was issued on March 3, 1998 (after the priority date) and filed on March 27, 1996 (before the priority date, but after the date of invention).

The Hall patent was issued on December 30, 1997 (after the priority date) and filed on January 24, 1996 (before the priority date, but after the date of invention).

Under 35 U.S.C. § 102, a person shall be entitled to a patent unless one of the conditions specified in subparagraphs (a)-(g) apply. It appears that the Examiner is citing the Autry and Hall references as prior art under § 102(e).

Section 102(e) requires that the claimed invention be described in: “. . . (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent” As shown in the attached Declaration of Prior Invention under 37 CFR § 1.131, the present invention was invented at least as early as January 24, 1996. Therefore, the Autry and Hall patents were not filed “before the invention by the applicant.”

Because the Autry and Hall patents are not a valid prior art references under any subsection of 35 U.S.C. § 102, Autry and Hall cannot be combined with each other or any other references under 35 U.S.C. § 103(a). Accordingly, the proposed combination Autry and Hall is not a valid rejection under § 103(a).

IV. Conclusion

Applicant has made a diligent effort to place the claims in condition for allowance. However, should there remain unresolved issues that require adverse action, it is respectfully requested that the Examiner telephone Applicant's attorney at 214-722-8983 so that such issues may be resolved as expeditiously as possible.

Respectfully submitted,

July 27, 2010
Date

/Michael J. Fogarty, III/
Michael J. Fogarty, III
Attorney for Applicants
Reg. No. 42,541

FOGARTY, L.L.C.
3010 LBJ Freeway, Suite 1200
Dallas, Texas 75234
Telephone: 214-722-8983
Facsimile: 214-272-2778